

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #1	CCRB Case #: 201503116	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/12/2015 2:00 PM, Wednesday, 04/22/2015	Location of Incident: 40 Precinct stationhouse	Precinct: 40	18 Mo. SOL 10/12/2016	EO SOL 10/12/2016	
Date/Time CV Reported Thu, 04/23/2015 10:10 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/23/2015 10:10 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			040 PCT
2. POM Stephen Barry	17142	954525	PBBX
3. LT Richard Mack	00000	916095	SOD SRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Kevon Sample	02609	935679	040 PCT
2. POM Kieran Waters	24849	931405	040 PCT
3. POM Arie Froimovich	10716	934887	DA BX

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: On April 12, 2015, an officer threatened to arrest § 87(2)(b)	
B. An officer	Abuse: On April 12, 2015, an officer questioned § 87(2)(b)	
C. POM Stephen Barry	Off. Language: On April 22, 2015, PO Stephen Barry made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
D. LT Richard Mack	Abuse: On April 22, 2015, Lt. Richard Mack threatened to arrest § 87(2)(b) and § 87(2)(b)	
E. LT Richard Mack	Discourtesy: On April 22, 2015, Lt. Richard Mack spoke rudely to § 87(2)(b)	

Case Summary

On April 12, 2015, § 87(2)(b)'s dirt bike was taken from him by an unidentified male and later vouchered as investigatory evidence by PO Stephen Barry of the 40th Precinct after the male was observed by officers to be riding the dirt bike recklessly. On the same day, at approximately 2:00 p.m., § 87(2)(b) went into the 40th Precinct stationhouse to retrieve his dirt bike and file a criminal complaint that the dirt bike was stolen. § 87(2)(b) spoke to an unidentified white, male officer, who allegedly told him, "Let me tell you something. Get the hell out of my precinct before I arrest you" (**Allegation A**). § 87(2)(b) told this officer that he was there to retrieve his property and asked why he had a problem. The officer then allegedly said, "If you don't get out of my precinct, I am going to arrest you. Just get the hell out of here now. I'm Irish and I'm not stupid. I know how this goes. As a matter of fact, give me your ID" (also **Allegation A** and **Allegation B**). § 87(2)(b) reached for his wallet to comply, but dropped it on the floor before he could retrieve his ID. The unidentified officer then allegedly said, "Get your wallet and get the hell out of here before I lock you up" (also **Allegation A**). § 87(2)(b) was not arrested or summonsed. § 87(2)(b) then left the precinct. Between April 12, 2015 and April 22, 2015, § 87(2)(b) went to the 40th Precinct stationhouse at least 9 times to retrieve his dirt bike, but was unsuccessful after each trip.

On April 22, 2015, at approximately 8:45 p.m., § 87(2)(b) went to the 40th Precinct stationhouse with § 87(2)(b), § 87(2)(b) and § 87(2)(b). § 87(2)(b) spoke to PO Barry, who allegedly told § 87(2)(b) "Oh well we already know who the person is. He's your lover" referring to the male suspect (**Allegation C**). § 87(2)(b) and § 87(2)(b) continued to speak to PO Barry for approximately nine minutes. During this time, approximately 10 additional officers came out to watch the conversation. Eventually, Lt. Richard Mack came out to the desk area and allegedly said, "There's an investigation going on. You're not getting your bike back. Just get the hell out of my precinct before you get arrested and don't come back to the precinct every day" (**Allegation D**). In an unverified phone statement, § 87(2)(b) alleged that Lt. Mack's statement was, "Get the fuck out of the precinct before we arrest you" (also **Allegation D** and **Allegation E**). § 87(2)(b) and § 87(2)(b) then left the stationhouse together. Neither were arrested or summonsed. § 87(2)(b) was not able to retrieve his dirt bike as of the date of his interview.

Mediation, Civil and Criminal Histories

- § 87(2)(b) did not initially accept mediation for this case, because he wanted to consult with his civil attorney Joseph Robinson. On May 4, 2015, § 87(2)(b) informed the CCRB that, on his advice, § 87(2)(b) would not be participating any further in either mediation or investigation due to possible civil litigation (01 Board Review).
- § 87(2)(b) was not pitched mediation, because § 87(2)(b) rejected mediation through his attorney after providing a verified statement (see IA's pertaining to § 87(2)(b) Robinson).
- § 87(2)(b), § 87(2)(a) 160.50
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§ 87(2)(b)

- On August 10, 2015, a FOIL registration confirmed that neither § 87(2)(b) nor § 87(2)(b) filed any notices of claim for this incident (04 Board Review).

Civilian and Officer CCRB Histories

- § 87(2)(b) has one previous CCRB case from 2011 with one unsubstantiated force allegation (05 Board Review).
- This is § 87(2)(b) first CCRB case (06 Board Review).
- PO Barry has been a member of the NYPD for two years and this is his first CCRB case.
- Lt. Mack has been a member of the NYPD for 20 years and has 19 previous CCRB cases involving 18 allegations and no substantiated allegations. § 87(2)(g)

Potential Issues

- § 87(2)(b) did not cooperate in providing a sworn statement confirming **Allegation E** or answering any follow up calls for additional information (see IA's pertaining to contact attempts to § 87(2)(b)).
- Following his interview, § 87(2)(b) ended his cooperation with the CCRB investigation through his attorney and thus could not be scheduled for a photo array to confirm whether PO Froimovich was the subject officer during the April 12, 2015 incident (see IA's pertaining to § 87(2)(b)).

NYPD Documents

- § 87(2)(b) described the subject officer for April 12, 2015 as being a: white, Irish, male, 6' tall, with a bald head or very short Caesar haircut with some short salt and pepper hair, in his 40's in a blue uniform with no stripes, and a bullet proof vest on the outside (01 Board Review).
- The 40th Precinct tour 2 roll call for April 12, 2015 listed Sgt. Quinones, PO Barahona, PO Watson, PO Waters, and PO Froimovich as having stationhouse assignments, but only PO Kieran Waters and PO Arie Froimovich fit § 87(2)(b)'s description of a white male (07 Board Review).
- PO Froimovich's memo book entries for April 12, 2015 indicated that he was on duty from 07:05 to 15:40 (08 Board Review).
- PO Froimovich's NYPD photo showed him to be a white, male, 5'9" tall, 210 pounds with an average build, partially bald with red hair, 36 years of age (11 Board Review).
- PO Water's memo book entries for April 12, 2015 show that he was assigned to stationhouse security, but indicate that he ended his tour early at 10:40 a.m. for "lost time" (09 Board Review).
- The 40th Precinct command log for tour 2 on April 12, 2015 has no entries related to this incident (10 Board Review).

Findings and Recommendations

Explanation of Subject Officer Identification

- Based on the above NYPD documents, PO Froimovich was interviewed. However, he did not recall the incident and none of the documents were able to conclusively establish whether PO Froimovich was the subject officer for the April 12, 2015 incident without confirmation via a photo array. § 87(2)(b) ended his participation in the investigation before a photo array could be conducted, therefore no subject officer was identified for **Allegation A** or **Allegation B**.
- § 87(2)(b) and § 87(2)(b) described the subject officer for the April 22, 2015 incident as an older white, male in uniform with a white shirt (01 and 13 Board Review).
- The April 22, 2015 incident tour 3 roll call for the 40th Precinct listed only two officers above the rank of sergeant as working. Lt. Mack and Lt. Besemah Rogers. Lt. Rogers is a black female and Lt. Mack is a white male. Therefore, **Allegations D** and **E** were pled against Lt. Mack (07 and 14 Board Review).

Allegation A -Abuse of Authority: On April 12, 2015, an officer threatened to arrest § 87(2)(b)

Allegation B -Abuse of Authority: On April 12, 2015, an officer questioned § 87(2)(b)

As discussed above, the investigation was unable to identify the subject officer for April 12, 2015, because of insufficient information in police documents and because § 87(2)(b) and § 87(2)(b) ended their cooperation with the investigation. § 87(2)(g)

Allegation C -On April 22, 2015, PO Stephen Barry made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)

§ 87(2)(b) said that on entering the 40th Precinct stationhouse with § 87(2)(b) he told Sgt. Kevon Sample, at the desk, that he wanted to speak to PO Barry, whose name he obtained off of property clerk invoice# 2000419455. Sgt. Sample went into the back of the stationhouse and came back out with PO Barry. Sgt. Sample was present while PO Barry spoke to § 87(2)(b). § 87(2)(b) said that PO Barry told him that there was an investigation pertaining to his bike and he could not have it back. § 87(2)(b) and § 87(2)(b) asked PO Barry why § 87(2)(b) could not retrieve his bike when no arrest had been made and no crime committed. After initially telling § 87(2)(b) and § 87(2)(b) that officers knew what happened, PO Barry allegedly added, “Oh well, we already know who the person is. He’s your lover.” § 87(2)(b) told PO Barry that he did not have a lover and his personal life was not relevant to his dirt bike (01 Board Review).

In his unverified phone statement, § 87(2)(b) said that he is a § 87(2)(b) and added that he was friends with § 87(2)(b)’s uncle. § 87(2)(b) did not corroborate that PO Barry made any statements referencing § 87(2)(b)’s sexuality inside the stationhouse, but thought he may have heard PO Barry make a statement that referenced § 87(2)(b)’s

sexuality outside of the stationhouse. § 87(2)(b) could not describe the specific statement (13 Board Review).

PO Barry said on April 22, 2015, between 7:30 p.m. and 8:30 p.m., an unknown officer informed him that a civilian wished to retrieve a vouchered dirt bike. § 87(2)(b) and another male who identified himself as an attorney stood by the front desk. PO Barry spoke to § 87(2)(b) for approximately eight to 10 minutes during which § 87(2)(b) had a slightly raised tone of voice. PO Barry explained to § 87(2)(b) that his bike was vouchered as investigatory evidence and could not be returned immediately. PO Barry did not recall if he or any other officer ever said to § 87(2)(b) “We know who this person is. He’s your lover.” PO Barry denied that he or any officers made any statements to § 87(2)(b) referencing his sexuality. PO Barry did have knowledge that the male who had been riding the dirt bike may have had an intimate relationship with § 87(2)(b) because other officers informed him that § 87(2)(b) had multiple domestic incident reports with the male who was identified as his boyfriend. One of these domestic incident reports involved a prior dispute over § 87(2)(b)’s dirt bike. PO Barry may have referenced this male in his conversation with § 87(2)(b) (15 Board Review).

Sgt. Sample remembered working as the desk officer on April 22, 2015, but did not remember whether any civilians came into the stationhouse to retrieve a vouchered dirt bike and did not recognize § 87(2)(b) from his driver’s license photo. Sgt. Sample was familiar with PO Barry, but did not remember if he was working on April 22, 2015. Sgt. Sample never heard PO Barry or any officers refer to a male’s “lover” (16 Board Review).

Lt. Mack did not remember if PO Barry had been working on April 22, 2015, but denied that he heard PO Barry or any officer use the word “lover” or make any comments referencing a male’s sexuality. Lt. Mack did not remember any individuals coming into the stationhouse to retrieve a vouchered dirt bike (17 Board Review).

§ 87(2)(g)

Allegation D -On April 22, 2015, Lt. Richard Mack threatened to arrest § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) said that he and § 87(2)(b) continued to discuss the situation for approximately 9 minutes in a normal tone of voice. During this conversation, approximately 10 additional officers came out to watch. Eventually, Lt. Mack came out from the back and allegedly said to § 87(2)(b) and § 87(2)(b) “There’s an investigation going on. You’re not getting your bike back. Just get the hell out of my precinct before you get arrested and don’t come back to the precinct every day.” § 87(2)(b) responded to Lt. Mack by asking why he was telling them to leave the stationhouse. § 87(2)(b) and § 87(2)(b) then left the stationhouse on their own (01 Board Review).

In an unverified phone statement, § 87(2)(b) generally corroborated § 87(2)(b)'s statement that additional officers came to watch their conversation with PO Barry, and that eventually Lt. Mack came out to speak to them. However, § 87(2)(b) said that Lt. Mack said, "Get the fuck out of the precinct before we arrest you." § 87(2)(b) also said that after this statement was made, PO Barry and the other officers who were watching the conversation escorted § 87(2)(b) and himself out of the stationhouse (13 Board Review).

Lt. Mack did not remember the specific incident, but denied telling any males, "There's an investigation going on. You're not getting your bike back. Just get the hell out of my precinct before you get arrested and don't come back to my precinct every day." Lt. Mack also denied that he made any threats to arrest anyone for not leaving the stationhouse and did not remember any civilians being ordered to leave the stationhouse on April 22, 2015. Lt. Mack said that individuals could be ordered out of the stationhouse if they acted unruly and arrested if they refused to leave, but he did not remember this occurring on April 22, 2015. Lt. Mack did not remember any events on April 22, 2015 or which officers were working. Lt. Mack did not recognize § 87(2)(b) from his photo (17 Board Review).

PO Barry did not recall if Lt. Mack was working on April 22, 2015. PO Barry did not remember if Lt. Mack interacted with § 87(2)(b) or § 87(2)(b) during or after his conversation. PO Barry never heard Lt. Mack or any officer say to § 87(2)(b) or § 87(2)(b) "Just get the hell out of my precinct before you get arrested." To PO Barry's knowledge, neither Lt. Mack nor any officer ever threatened to arrest § 87(2)(b) or § 87(2)(b). PO Barry did not remember if Lt. Mack or any officer ordered § 87(2)(b) and § 87(2)(b) out of the stationhouse. PO Barry did not remember if he or any officer ever escorted § 87(2)(b) or § 87(2)(b) out of the stationhouse (15 Board Review).

Sgt. Sample did not remember if Lt. Mack was working on April 22, 2015. Sgt. Sample did not remember any individuals being ordered out of the stationhouse on April 22, 2015. Sgt. Sample did not remember any officers threatening to arrest any individuals in the stationhouse on April 22, 2015. Sgt. Sample did not recognize § 87(2)(b) from his photo (16 Board Review).

§ 87(2)(g)

Allegation E –Discourtesy: On April 22, 2015, Lt. Richard Mack spoke rudely to § 87(2)(b)

§ 87(2)(b) provided a phone statement in which he alleged that, during the April 22, 2015 incident, Lt. Mack told him to "Get the fuck out of the precinct before we arrest you." § 87(2)(b) refused to schedule an interview at the time of the call, because he was not sure whether he wanted to participate in the investigation. § 87(2)(b) did not respond to calls or letters to schedule an interview in accord with agency standards. On August 5, 2015, a search of the Department of Correction of NYC and NYS confirmed that § 87(2)(b) was not incarcerated. § 87(2)(g)

Squad: 1

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date